

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants:	Dirk Beher, et al.		
Serial No.:	10/580,286	Case No.:	TI615YP
Filing Date:	January 29, 2007		Art Unit: 1617
For:	1-ALKYL-3-THIO-SUBSTITUTED INDOLE-2-ALKYNOIC ACIDS USEFUL FOR THE TREATMENT OF ALZHEIMER'S DISEASE AND RELATED CONDITIONS		

Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

RESPONSE TO RESTRICTION REQUIREMENT

Sir:

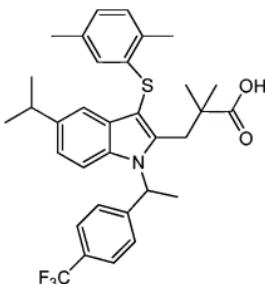
This communication is in reply to the Restriction Requirement dated September 29, 2009, setting forth a statutory period for reply ending October 29, 2009.

The Examiner requires election of one of Groups I or II as set forth at pages 2 of the Office action. The Examiner also requires provisional election of a single species for prosecution.

In response, Applicants elect Group I, with traverse. Applicants refer the Examiner to the Preliminary Amendment dated May 24, 2006 and note that claims 3 and 4 have been canceled and as such are improperly included in Group I. The pending claims are claims 1, 2 and 5 to 16.

In response to the species election requirement, Applicants hereby elect the compound of formula I in which X is S, Y is CH₂, Z is CO₂H, one R¹ group is H and the other is Me, both R² groups are Me, R³ is 2,5-di-Me-Ph, one of R⁴, R⁵ or R⁶ is 5-isopropyl and the

others are H, and R⁷ 4-CF₃-Ph, which is described at page 10, the sixth compound of table 1, and the disease Alzheimer's disease. The aforementioned elected compound has the following chemical structure:



This provisional election of species is being made for purposes of facilitating the Examiner's search in accordance with the procedures set forth in M.P.E.P. § 803.02.

In Group I, claims encompassing the elected compound and disease are claims 1, 2 and 6 to 12. In Group II, claims 13 and 14 encompass the elected compound. Claims 15 and 16 encompass the elected compound as part of a pharmaceutical composition.

With respect to the traversal, Applicants refer the Examiner § 10.24 of the PCT International Search and Preliminary Examination Guidelines, which reads as follows:

10.24 Example 4

Claim 1: Use of a family of compounds X as insecticides.

Claim 2: Compound X₁ belonging to family X.

Provided X₁ has the insecticidal activity and the special technical feature in claim 1 is the insecticidal use, unity is present.

Applicants submit the structure of the present claims is analogous to the example above. The special technical feature of claims 1, 2 and 5 to 12 is the use of the claimed compounds for

treating or preventing a disease associated with deposition of A β in the brain, such as Alzheimer's disease. *Gillard*, on the other hand, teaches compounds which are useful as anti-asthmatic, anti-allergic, anti-inflammatory and cytoprotective agents. See abstract therein. Claims 13 to 16 correspond to claim 2 in Example 4 above, as the compounds claimed in claims 13 to 16 have the activity of inhibiting the production of A β (1-42). As such, and as stated in § 10.24 above, unity is present.

Applicants acknowledge the Advisory of Rejoinder beginning at page 4 of the Office action stating that process claims commensurate in scope with allowed product claims will be rejoined pursuant to M.P.E.P. § 821.04.

In view of the action taken, it is believed that applicants have satisfied the restriction requirement and the species election. An early and favorable examination is earnestly solicited. Any fees required in connection to this Response may be taken from Merck Deposit Account No. 13-2755.

Respectfully submitted,

By /Raynard Yuro, Reg. # 45570/
Raynard Yuro, Reg. No. 45,570
Attorney for Applicants

MERCK & CO., Inc.
P.O. Box 2000
Rahway, New Jersey 07065
Tel.: (732) 594-0182

Date: October 22, 2009